

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Application of Hardy Cellular Telephone Company) WT Docket No. 14-240
and McBride Spectrum Partners, LLC)
)
For Consent To Assign License)

MEMORANDUM OPINION AND ORDER

Adopted: September 14, 2015

Released: September 14, 2015

By the Chief, Wireless Telecommunications Bureau:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK.....	2
III. POTENTIAL PUBLIC INTEREST HARMS.....	9
A. Market Definitions.....	11
B. Competitive Effects of the Proposed Transaction.....	14
IV. POTENTIAL PUBLIC INTEREST BENEFITS.....	22
V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS.....	25
VI. ORDERING CLAUSES.....	26

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of Hardy Cellular Telephone Company, an indirect wholly-owned subsidiary of United States Cellular Corporation (together with Hardy Cellular Telephone Company, “USCC”), and McBride Spectrum Partners, LLC for Commission consent to the partition and assignment from McBride to USCC of one Lower 700 MHz A Block license that covers all or parts of three local market areas in West Virginia. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ As a result of the proposed transaction, USCC would end up holding post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in all or parts of two local market areas. After carefully evaluating the likely competitive effects of USCC’s increased aggregation of below-1-GHz spectrum in these local market areas, as well as the

¹ See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6240 ¶¶ 286-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”), *recon. denied*, *Order on Reconsideration*, FCC 15-79 (rel. Aug. 11, 2015).

other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely, such as the deployment of a competitive LTE network and improved throughput. Thus, based on the record before us and our competitive review, we find that the proposed license assignment would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* USCC, headquartered in Chicago, Illinois, provides wireless telecommunications services to approximately 4.8 million customers in 23 states.² McBride Spectrum Partners, LLC (“McBride,” and together with USCC, the “Applicants”) is a licensee that does not currently provide mobile wireless services.

3. *Description of the Transaction.* On September 24, 2014, USCC and McBride filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),³ seeking Commission consent to partition and assign one Lower 700 MHz A Block license to USCC.⁴ Through this partition, USCC would acquire 12 megahertz of low-band spectrum in all or parts of three Cellular Market Areas (“CMAs”) in West Virginia.⁵ Post-transaction, USCC would hold 34 to 59 megahertz of spectrum in total in these three CMAs, including 49 megahertz of below-1-GHz spectrum in at least one county in two of the three CMAs.⁶

4. The Applicants assert that, as a result of the proposed transaction, the additional spectrum would enable USCC to offer innovative wireless services and to enhance its voice and data service offerings in these geographic areas.⁷ The Applicants further contend that the acquisition of this spectrum would support a 10×10 megahertz Long Term Evolution (“LTE”) deployment by USCC and would improve its throughput speeds.⁸

5. *Transaction Review Process.* On September 24, 2014, the Applicants filed the Application. On December 9, 2014, the Commission accepted the Application for filing and established a pleading cycle.⁹ The Commission received no filings in response to the *Accepted for Filing Public Notice*. On December 9, 2014, the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports

² See United States Cellular Corp., SEC Form 10-K, at 1 (filed Feb. 25, 2015), available at http://www.sec.gov/Archives/edgar/data/821130/000082113015000010/form_10k.htm. USCC is a majority-owned (84%) subsidiary of Telephone and Data Systems, Inc. See *id.*; Application for Assignment of License from McBride Spectrum Partners, LLC to Hardy Cellular Telephone Company, ULS File No. 0006447948 (filed Sept. 24, 2014) (“Application”), Exhibit 1 – Description of the Transaction at 1 (“Public Interest Statement”).

³ 47 U.S.C. § 310(d).

⁴ See Application.

⁵ See Application, Attachment A – Spectrum Aggregation.

⁶ See United States Cellular Corporation and McBride Spectrum Partners, LLC Seek FCC Consent to the Assignment of One Lower 700 MHz A Block License in West Virginia, WT Docket No. 14-240, *Public Notice*, 29 FCC Rcd 14745, 14745 (WTB 2014) (“*Accepted for Filing Public Notice*”).

⁷ See Public Interest Statement at 1.

⁸ See Public Interest Statement at 2-3.

⁹ See generally *Accepted for Filing Public Notice*. Petitions were due January 20, 2015, oppositions were due January 30, 2015, and replies were due February 6, 2015.

and LNP data.¹⁰ Also, on December 9, 2014, pursuant to section 308(b) of the Act,¹¹ the Bureau sent letters to USCC and McBride requesting the submission of written responses and supporting documentation by January 5, 2015, to specific inquiries related to the proposed transaction.¹²

6. *Standard of Review.* Pursuant to section 310(d) of the Act,¹³ we must determine whether the Applicants have demonstrated that the proposed assignment of license would serve the public interest, convenience, and necessity.¹⁴ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁵ other applicable statutes, and the Commission's rules.¹⁶ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁷ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁸ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁹

7. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²⁰ The Commission and the Department

¹⁰ See generally Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign One Lower 700 MHz License; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-240, CC Docket No. 99-200, *Public Notice*, 29 FCC Rcd 14766 (WTB 2014); Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-240, *NRUF/LNP Protective Order*, 29 FCC Rcd 14759 (WTB 2014).

¹¹ 47 U.S.C. § 308(b).

¹² See generally Letter from Roger C. Sherman, Chief, WTB, to John Gockley, USCC, WT Docket No. 14-240 (WTB rel. Dec. 9, 2014) ("*USCC Information Request*"); Letter from Roger C. Sherman, Chief, WTB, to Vincent D. McBride, McBride Spectrum Partners, LLC, WT Docket No. 14-240 (WTB rel. Dec. 9, 2014) ("*McBride Information Request*"). The Bureau also released a *Joint Protective Order* to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record. See generally Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-240, *Joint Protective Order*, 29 FCC Rcd 14749 (WTB 2014).

¹³ 47 U.S.C. § 310(d).

¹⁴ See, e.g., Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) ("*AT&T-Plateau Wireless Order*"); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co. LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) ("*AT&T-Leap Order*").

¹⁵ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741 ¶ 13.

¹⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15.

of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission’s competitive analysis under the public interest standard is somewhat broader.²¹ The Commission’s public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.²² If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.²³

8. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission’s rules.²⁴ We note that no parties have raised issues with respect to the basic qualifications of USCC or McBride, and, in addition, USCC previously and repeatedly has been found qualified to hold Commission licenses.²⁵ We find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of USCC or McBride.²⁶

III. POTENTIAL PUBLIC INTEREST HARMS

9. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²⁷ The Commission has used an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its initial screen if it encounters other factors that may bear on the public interest inquiry.²⁸ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that

²¹ See *id.*

²² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16; Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order*, 27 FCC Rcd 10698, 10711 ¶ 30 (2012) (“*Verizon Wireless-SpectrumCo Order*”).

²³ 47 U.S.C. § 309(e); see also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

²⁴ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10444-45 ¶ 28 (2013) (“*Alaska Wireless Order*”).

²⁵ See, e.g., Application for Assignment of License from Comporium Wireless, LLC to United States Cellular Corporation, ULS File No. 0005669429 (filed Mar. 4, 2013); Application for Assignment of License from Cellco Partnership to United States Cellular Corporation, ULS File No. 0005576355 (filed Jan. 4, 2013); Application for Assignment of Licenses from Actel, LLC to United States Cellular Corporation, ULS File No. 0005272371 (filed June 21, 2012, amended Aug. 1, 2012).

²⁶ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

²⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5133 ¶ 12; Application of AT&T Inc. and Qualcomm Incorporated for Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17602 ¶ 31 (2011) (“*AT&T-Qualcomm Order*”). See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

²⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47, 10450 ¶¶ 33, 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

it is in the public interest to continue to use its initial spectrum screen and case-by-case review,²⁹ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.³⁰ The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”³¹ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.³²

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,³³ and that the two leading nationwide providers hold most of the low-band spectrum available today.³⁴ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³⁵ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³⁶ We consider below whether there would be an increased likelihood in these local market areas that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals’ costs would be increased to the extent that they would be less likely to be able to compete robustly.³⁷

²⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

³⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. The Commission applied this below-1-GHz review for the first time in the *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

³¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

³² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

³³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

³⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6164 ¶¶ 46, 60.

³⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

³⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign and Lease AWS-1 and Lower 700 MHz Licenses, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12878, 12893-94 ¶¶ 40-41 (WTB 2013) (“*AT&T-Verizon Wireless-Grain Order*”). See also *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

³⁷ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12887 ¶ 20.

A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁸ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

12. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined “mobile telephony/broadband services” product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁹ In addition, we find that the relevant geographic market is local – the Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers nine counties, in all or parts of three CMAs, that account for well under one percent of the population of the United States.⁴⁰

13. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.⁴¹ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.⁴²

B. Competitive Effects of the Proposed Transaction

14. *Record.* USCC contends that it is one of the few remaining “mid-sized” providers,⁴³ and the Applicants maintain that the proposed transaction is “pro-competitive” as it would allow USCC to compete with its larger rivals.⁴⁴ No petitions to deny or comments were received.

15. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁴⁵ The first part of the screen is based on the

³⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34.

³⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

⁴⁰ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction’s competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36. See also *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

⁴¹ See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117 ¶ 22; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

⁴² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41.

⁴³ Response of USCC to the General Information Request Dated December 9, 2014, WT Docket No. 14-240, at 7 (Jan. 8, 2015) (“USCC Information Request Response”).

⁴⁴ Public Interest Statement at 3.

⁴⁵ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶ 46, ¶¶ 286-88. As with our application of the initial total spectrum screen, we evaluate (continued....)

size of the post-transaction Herfindahl-Hirschman Index (“HHI”) and the change in the HHI.⁴⁶ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴⁷ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴⁸

16. In the transaction before us, USCC would acquire 12 megahertz of low-band spectrum in nine counties in all or parts of three CMAs in West Virginia. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Next, examining the markets on a county-by-county basis does not result in any market triggering the total spectrum screen. We find, however, after review on a county-by-county basis,⁴⁹ that USCC would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in at least one county in two of the three CMAs: CMA 703 (West Virginia 3 – Monongalia) and CMA 705 (West Virginia 5 – Tucker), and therefore we look more closely at the potential competitive effects these holdings may have.⁵⁰

17. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the combined entity’s post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁵¹

(Continued from previous page) _____

increases in below-1-GHz spectrum concentration on a county-by-county basis. See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁴⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁴⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42. The current total amount of spectrum that is suitable and available is 580.5 megahertz, which yields a trigger of 194 megahertz, assuming that AWS-1 and BRS/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251, n.667.

⁴⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 286-88. See also, e.g., *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 ¶ 31.

⁴⁹ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19 ¶¶ 24-25.

⁵⁰ USCC would also acquire 12 megahertz of low-band spectrum in Doddridge and Lewis counties in CMA 702 (West Virginia 2 – Wetzel) covering approximately 32% of the population of the CMA. Post-transaction, USCC would hold 24 megahertz of below-1-GHz spectrum in these two counties: We do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review.

⁵¹ We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database, network coverage from Mosaik July 2014 data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

18. West Virginia 3 – Monongalia is a non-rural market of approximately 289,000 people, with a population density of 128 people per square mile.⁵² Five service providers have a significant market share: AT&T, nTelos, Sprint, USCC, and Verizon Wireless hold approximately [REDACTED] percent of the market, respectively. Post-transaction, USCC would hold 59 megahertz of spectrum, including 49 megahertz of spectrum below 1 GHz across the CMA. The four nationwide service providers' spectrum holdings range from 20 to 111.5 megahertz, and furthermore, nTelos holds 20 to 40 megahertz of spectrum. With respect to below-1-GHz spectrum, AT&T holds 43 megahertz, Verizon Wireless holds 22 megahertz, Sprint holds 14 megahertz, and DISH holds 6 megahertz, while nTelos does not hold below-1-GHz spectrum.⁵³ In terms of population and land area coverage, USCC and AT&T each have significant 3G coverage:⁵⁴ USCC covers approximately 99 percent of the population and 97 percent of the land area with its 3G network, and the comparable 3G population and land area percentages are close to 100 percent for AT&T. Further, nTelos has significant 3G population coverage, covering approximately 77 percent,⁵⁵ while Verizon Wireless covers approximately 67 percent of the population and 44 percent of the land area with its 3G network.⁵⁶ In addition, three service providers have deployed a significant HSPA+ or LTE network. The population and land area percentages are approximately 91 percent and 79 percent for USCC, close to 100 percent for both for AT&T, and approximately 90 percent and 70 percent for Verizon Wireless.

19. We find that, notwithstanding the fact that USCC would hold more than one-third of the below-1-GHz spectrum post-transaction in West Virginia 3 – Monongalia, the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered.⁵⁷ In this non-rural market, there are currently four other service providers with significant market shares. In addition to USCC, two other service providers, AT&T (the leading service provider) and nTelos, have significant 3G population coverage, and two other service providers, AT&T and Verizon Wireless, have significant LTE population coverage. Further, a number of service providers have access to low-band spectrum. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁵⁸ We find that the acquisition of this spectrum by USCC is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs, and thus,

⁵² The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, Report and Order*, 19 FCC Rcd 19078, 19087-88 ¶¶ 11-12 (2004).

⁵³ In addition, DISH holds 50 megahertz of above-1-GHz spectrum.

⁵⁴ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 n.279.

⁵⁵ In addition, nTelos covers approximately 34% of the land area with its 3G network.

⁵⁶ According to Mosaik, Sprint has not deployed its own network in this market. We note that Sprint has contracted with nTelos through its Strategic Network Alliance in which nTelos is the exclusive service provider in western Virginia for all of Sprint's CDMA and LTE wireless customers. See nTelos, SEC Form 10-Q, at 19 (filed May 1, 2015), available at <http://ir.ntelos.com/all-sec-filings/content/0001328571-15-000024/ntls-x03312015x10q.htm>.

nTelos recently entered into agreements with Shenandoah Personal Communications, LLC ("Shenandoah") and Sprint pursuant to which nTelos would become a wholly-owned subsidiary of Shenandoah, and all of nTelos's spectrum licenses would be assigned to Sprint. The parties recently submitted applications seeking consent to the multi-party transaction. See *Application To Assign Licenses from NTELOS Inc. to SprintCom, Inc.*, ULS File No. 0006917154 (lead application) (filed Aug. 25, 2015).

⁵⁷ See ¶ 17 *supra*. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

⁵⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of USCC in West Virginia 3 – Monongalia.

20. West Virginia 5 – Tucker is a rural market of approximately 129,000 people, with a population density of only 27 people per square mile. Three service providers have a significant market share: AT&T, nTelos, and USCC hold approximately [REDACTED] percent of the market, respectively. In addition, Sprint and Verizon Wireless each have some market presence, holding approximately [REDACTED] percent of the market, respectively. Post-transaction, USCC would hold 37 to 59 megahertz of spectrum, while the four nationwide service providers hold 40 to 123 megahertz of spectrum, and nTelos holds 20 to 40 megahertz of spectrum.⁵⁹ With respect to below-1-GHz spectrum holdings, USCC would acquire 12 megahertz of Lower 700 MHz A Block spectrum in Upshur county only, which covers approximately 19 percent of the population of West Virginia 5 – Tucker, and post-transaction would hold 37 to 49 megahertz of below-1-GHz spectrum across the CMA. Further, AT&T holds 43 megahertz of low-band spectrum, Verizon Wireless holds 22 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz (covering approximately 28 percent of the population), and DISH holds 6 megahertz.⁶⁰ In terms of 3G population and land area coverage, USCC and AT&T each have significant coverage: USCC covers approximately 79 percent of the population and 51 percent of the land area, while the comparable 3G network population and land area percentages are approximately 96 percent and 80 percent for AT&T. In addition, nTelos covers approximately 44 percent of the population with its 3G network. Further, AT&T covers approximately 93 percent of the population and 70 percent of the land area with its HSPA+ network, while the comparable LTE population and land area percentages are approximately 40 percent and 20 percent for USCC, and 22 percent and 14 percent for Verizon Wireless.

21. We find that notwithstanding the fact that USCC would hold, as a result of the proposed transaction more than one-third of the below-1-GHz spectrum post-transaction in Upshur County in West Virginia 5 – Tucker, the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered.⁶¹ West Virginia 5 – Tucker is a rural market. There are two other service providers, AT&T (the leading service provider) and nTelos, who have significant market shares. In addition, two nationwide service providers, Verizon Wireless and Sprint, each have some market presence and hold low-band spectrum. Further, as well as USCC's significant 3G network, AT&T has significant 3G and HSPA+ population and land area coverage, nTelos covers well over 40 percent of the population with 3G, and Verizon Wireless has begun to build out its LTE network. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁶² We find that the acquisition of this spectrum by USCC is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs, and thus, the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of USCC in West Virginia 5 – Tucker.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

22. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶³ The Commission applies several criteria in deciding

⁵⁹ In addition, DISH holds 50 megahertz of above-1-GHz spectrum.

⁶⁰ Cavalier Wireless also holds 12 megahertz of low-band spectrum, covering approximately 7% of the population.

⁶¹ See ¶ 17 *supra*. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

⁶² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

⁶³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

whether a claimed benefit should be considered and weighed against potential harms,⁶⁴ and applies a “sliding scale approach” to evaluating benefit claims.⁶⁵ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁶⁶ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁶⁷

23. *Potential Benefits.* The Applicants assert that the proposed transaction would provide USCC with additional below-1-GHz spectrum that would enable it to offer innovative wireless services in the subject markets and allow USCC to improve and enhance its voice and data service offerings to the public, specifically by deploying LTE.⁶⁸ The Applicants maintain that USCC currently deploys LTE on a 5×5 megahertz channel, while the larger wireless providers generally have deployed 10×10 megahertz LTE channels,⁶⁹ which, they assert, permit approximately twice the throughput speeds and capacity of a 5×5 megahertz LTE deployment.⁷⁰ The Applicants contend that the acquired spectrum would permit USCC to deploy a 10×10 channel with throughput speeds comparable to those of the larger providers, which would allow USCC to provide competitive LTE service.⁷¹ USCC maintains that additional spectrum is “essential” to improving its system throughput speeds, such that it can provide an LTE experience comparable to its competitors, and thus bolster its long-term competitive position.⁷² Although USCC holds PCS spectrum in all three subject markets, it contends that the superior propagation characteristics of the proposed Lower 700 MHz spectrum are preferable for expanding LTE capacity in the rural, mountainous areas that predominate there.⁷³

24. *Evaluation.* We have reviewed the Applicants’ asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of USCC acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants’ contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz A Block spectrum, USCC would be able to deploy a more competitive LTE network. We further find that by adding this low-band spectrum, USCC would potentially be able to serve these markets – including the rural and mountainous

⁶⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132.

⁶⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁶⁶ *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2794 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88.

⁶⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

⁶⁸ See Public Interest Statement at 1-2.

⁶⁹ See Public Interest Statement at 2.

⁷⁰ See USCC Information Request Response at 4. See also USCC Exhibits, Attachment D.

⁷¹ See Public Interest Statement at 2-3. See also USCC Information Request Response at 2-4; USCC Exhibits, Attachment C.

⁷² See USCC Information Request Response at 2-4. USCC noted the Commission’s repeated statements about the importance of improving broadband speed, citing by example Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund, *Second Report and Order on Reconsideration*, WC Docket Nos. 13-184, 10-90, 29 FCC Rcd 15538, 15565-66 ¶ 68 (2014).

⁷³ See USCC Information Request Response at 3; Public Interest Statement at 3.

parts – with greater efficiency and consistently greater throughput.⁷⁴ Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide providers are important sources of competition in rural areas, where multiple nationwide service providers may have less incentive to offer high quality services.⁷⁵ The Commission further noted that non-nationwide service providers enhance competitive choices for consumers in the mobile wireless marketplace, and help promote deployment in rural areas.⁷⁶ Thus, as a result of the proposed transaction, customers are likely to benefit in the immediate future from improved throughput performance and access to a more robust network, resulting in a better customer experience.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

25. In the proposed transaction, USCC would increase its low-band spectrum holdings, and would hold post-transaction 24 megahertz of low-band spectrum in Doddridge and Lewis counties in West Virginia 2 – Wetzel, and 49 megahertz of low-band spectrum in all or parts of both West Virginia 3 – Monongalia and West Virginia 5 – Tucker. As discussed herein, the *Mobile Spectrum Holdings Report and Order* determined that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it “anticipate[d] that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”⁷⁷ We have reviewed the Applicants’ initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of USCC’s increased aggregation of below-1-GHz spectrum in the markets implicated by the proposed transaction, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of USCC is unlikely to be materially lessened in either West Virginia 3 – Monongalia or West Virginia 5 – Tucker, the two markets in which we applied enhanced factor review. Further, we find that the record provides general support for the Applicants’ claims, and under our sliding scale approach, the potential public interest benefits outweigh any potential public interest harms. Thus, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

26. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of license held by McBride Spectrum Partners, LLC to Hardy Cellular Telephone Company is GRANTED.

27. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

⁷⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53, n.160; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized there are some inefficiencies associated with a 5×5 megahertz LTE deployment, as compared to a 10×10 megahertz LTE deployment. See *id.*

⁷⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206 ¶ 179.

⁷⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

⁷⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

28. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau